IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 13TH JUNE 2007 / 23RD JYAISHTA 1929

WP(C).No. 15377 of 2005(E)

OS.1721/2002 of PRL.M.C.,ERNAKULAM
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PETITIONERS:
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1. N.K.PRADEEP, AGED 32, S/O.LATE KRISHNANKUTTY, RESIDING AT NARANATH, VADAKODE KARA, THRIKKAKARA NORTH VILLAGE, KANAYANNUR TALUK.

2. M.S.SOMAN, S/O.SANKARAN, AGED ABOUT 35, BARBER, RESIDING AT NARANATH, VADAKODE KARA, THRIKKAKKARA NORTH VILLAGE, KANAYANNUR TALUK.

3. RAJAPPAN, S/O.VELAYUDHAN, AGED ABOUT 50, RESIDING AT NARANATH VADAKODE KARA, THRIKKAKKARA VILLAGE, KANAYANNUR TALUK.

4. SOBHANAN, S/O.VELAYUDHAN, AGED ABOUT 25, RESIDING AT VEZHANGAPPARAMBIL, VADAKKODE KARA, THRIKKAKKARA NORTH VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.K.C.ELDHO

RESPONDENTS:
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1. C.P.HARIDAS, S/O.LATE PAPPUKUNJAN, AGED 53, RESIDING AT CHALACHOTTIPPARAMBIL, VADAKKODE KARA, THRIKKAKKARA NORTH VILLAGE, KANAYANNUR TALUK.

2. C.P.GIRIDAS, S/O.LATE PAPPUKUNJAN, AGED 46, RESIDING AT CHALACHOTTIPPARAMBIL VADAKKODE KARA, THRIKKAKKARA NAORTH VILLAGE, KANAYANNUR TALUK.

3. C.P.RAJEEVAN, S/O.LATE PAPPUKUTTAN,
AGED 36, RESDING AT CHALACHOTTIPPARAMBIL,
VADAKODE KARA, THRIKKAKKARA NORTH VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.K.C.CHARLES
SRI.A.BALAGOPALAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 15377 OF 2005

APPENDIX

PETITIONERS' EXHIBITS:

EXT.P1 : TRUE COPY OF THE PLAINT IN OS NO.1721/02 ON THE FILE OF THE FIRST ADDL.MUNSIFF'S COURT, ERNAKULAM.

EXT.P2 : TRUE COPY OF THE WRITTEN STATEMENT IN OS NO.1721 OF 2002.

EXT.P3 : TRUE COPY OF THE WORK MEMO DT.21.1.04 IN OS NO.1721 OF 2002.

EXT.P4 : TRUE COPY OF THE PETITION DT.7.4.2005 FILED IN OS NO.1721 OF 2002 BY THE RESPONDENTS.

EXT.P5 : TRUE COPY OF THE ORDER IN PETITION DT.7.4.2005 FILED IN OS NO.1721 OF 2002.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 15377 OF 2005

Dated this the 13th day of June, 2007

JUDGMENT

Ext.P5 order passed by the learned Munsiff on Ext.P4 application seeking a clarification to the order dt.30.07.04 as to enable measurement of the schedule properties by the advocate commissioner already appointed on the basis of the respondent's title deeds is under challenge in this proceedings under Article 227. It is submitted that serious objections were filed by the writ petitioner to Ext.P4 application. Learned counsel for the petitioner, Sri.K.C.Eldho, submits that the objections were not considered at all, but passing Ext.P5 an unusually cryptic order, the learned Munsiff allowed Ext.P4 application. According to Mr.Eldho the prayers in Ext.P4 are couched in apparently innocuous words. The objective of the plaintiff is to get away from the impact of his admissions in the plaint that the extent of the property is only 60 cents. It was found on the basis of the commissioner's report already available that there is no encroachment into 60 cents. Now by requesting that a measurement of the property be made on the basis of the old title documents, what the plaintiff is trying to make out is that the actual extent of property is 5 cents in excess of 60 cents. If the plaintiff is allowed to do that, serious prejudice will be caused to the petitioner.

Mr.A.Balagopalan, counsel for the respondent submits that the commission report has already been set aside and it is necessary for a proper resolution of the issues that a fresh measurement is conducted. What the plaintiff wants is measurement on the basis of document of title. The plaintiff is yet to seek amendment of the plaint. Therefore it cannot be said that Ext.P5 order by itself will cause any prejudice to the petitioner either in the matter of the suit or in the matter of alleged violation of the injunction order.

Having considered the rival submissions, I am of the view that it is not necessary that Ext.P5 order is interfered with by this Court under the supervisory jurisdiction. It is however made clear that confirmation of Ext.P5 by this Court will not stand in the way of the petitioner resisting any subsequent application by the plaintiff for amendment of addition of pleadings on the ground of prejudice due to the shift in the stand of the plaintiff regarding the extent of his property. The court below will under such a contingency take into account the contention that prejudice will be caused to the petitioner seriously, notwithstanding confirmation of Ext.P5 by this Court by this judgment.

PIUS C. KURIAKOSE, JUDGE

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